

U.S. DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

SANDRA TOUSSAINT

CIVIL ACTION NO. 07-2041-A

-vs-

JUDGE DRELL

UNDERWRITERS AT LLOYDS LONDON  
ENGLAND, et al.

MAGISTRATE JUDGE KIRK

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**ORDER ADOPTING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

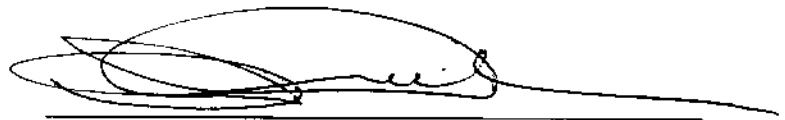
Before us is the Report and Recommendation from the magistrate judge on plaintiff's Motion to Remand. Having considered defendants' tardy observation that the penalty for a violation of La. R. S. 22:658 is indeed 50%, we note that at that point defendants' arguments to the Court go awry. In their objections defendants argue that the petition, as originally filed, does reflect an amount in controversy of more than \$75,000. Plaintiff's itemized damages are \$51,496, according to defendants. That amount is argued as THE amount in controversy because it was the original claim amount. What defendants fail to set forth, however, is the clear revelation in plaintiff's petition that the amount unpaid (the TRUE amount in controversy) is roughly only \$32,860. Half of that exceeds, barely,

\$16,430. These amounts, even with a claim for attorneys' fees are not at all certain to exceed the jurisdictional amount.

The defendants' argument about the supposed requirement of Article 893 of the Louisiana Code of Civil Procedure has previously been rejected by the Fifth Circuit. See *Gebbia v. Wal-Mart Stores, Inc.*, 233 F. 3d 880 (5th Cir. 2000). Article 893 only requires the jurisdictional statement where the jurisdictional amount is not otherwise clear from the petition. Here, it is. Accordingly, the Report and Recommendation is adopted and this case ordered REMANDED.

That said, there is no valid explanation in the record, except for a weak footnote, as to why defendants did not timely file an opposition to the Motion to Remand. Defendants are ORDERED to supplement the record, with a copy to the undersigned, within 10 days with a complete explanation of their failure.

SIGNED on this 13<sup>th</sup> day of November, 2008, at Alexandria, Louisiana.

A handwritten signature in black ink, appearing to read "Dee D. Drell", is written over a horizontal line.

DEE D. DRELL  
UNITED STATES DISTRICT JUDGE